

**BOARD RULES OF PRACTICE & PROCEDURES COMPREHENSIVE UPDATE**  
**Public Comment Summary and Board Response (As of May 20, 2011)**

Subject	Proposed Rule	Comment (all proposed language shown in <i>italics</i> )	Commentator	Requests Amendment or Clarification	Board Response
Additional Board Powers	242-03-310 to -340	Rules relate to subpoena, hearing examiner use, and critical areas expert – believes these rules are a good memorialization and should apply if live testimony is allowed	Jefferson County [David Alvarez]	NA	NA
Amicus	242-03-280	Questions if opposing parties would be given an opportunity to respond to amicus brief. For clarity, perhaps the rule should so specify	GordonDerr [Jay Derr]	YES	New sentence added as requested
Authorized Representatives	242-03-115	Rule appears to require any person/attorney representing a party to file a Notice of Appearance however, since the PFR itself identifies the petitioner's representative or attorney it is unnecessary to require separate filing. Suggests clarifying language be added to end of rule:  (1) Notice of Appearance. Any person acting in a representative capacity on behalf of a party or participant shall file a notice of appearance ... <i>A person listed in a petition for review as acting in a representative capacity need not file an appearance.</i>	Futurewise [Tim Trohimovich]	YES	New sentence added as requested
Briefs	242-03-590	Applauds this rule as it appears to eliminate the need for filing original and four copies as was required by prior WAC 242-02-570	Jefferson County [David Alvarez]	NA	While the reference to the number of copies is omitted from this rule, WAC 242-03-230 (PFR) and -240 (other documents) still

					reference the original + four requirement
Briefs	242-03-530(11) and -545(1)(c)	Supports ability to put page limits but should be equitable – if 4 petitioners, each with 50-page brief than respondent should have same	Kitsap County [Shelly Kniep]	YES	Comment does not require rule change as it is discretionary with PO
Burden of Proof/Standard of Review	New rule	Prior WAC rules 242-02-632 and -634 address the Burden of Proof and Standard of Review. While recognizes these simply repeat the RCW would like to see them in WAC 242-03 “intact and unchanged”	Jefferson County [David Alvarez]	YES	Rules are in statutes and case law. If reinserting these rules, would also need to add the SMA and SEPA standards of review See RCW 36.70A.320 and .3201 for GMA burden/standards
Compliance	242-03-840 Reconsideration Compliance Schedule	Should this section specify that if you don’t ask to extend the compliance schedule within the time frame for reconsideration; you cannot ask later to extend the compliance deadline? Instead, you will have to have a compliance hearing and enter a finding of continued noncompliance to get additional time, even if all parties agree; might be worth an explicit statement in the rules.	GordonDerr [Jay Derr]	YES	Clarifying sentence added as requested
Compliance	242-03-900 Hearing	Is compliance hearing a higher priority than lifting invalidity hearing? If not, then the “highest priority” language might need clarification.	GordonDerr [Jay Derr]	YES	Language in rule is verbatim from statute RCW 36.70A.330(2)
Compliance	242-03-900	See comment in regards to section 242-03-820 regarding the need for clarity on Board orders related to SMP challenges.	Ecology [Tom Clingman]	YES	Compliance provisions are amended to clarify procedure for SMP cases
Compliance	242-03-930 Compliance	Appreciates the clarification offered by this rule and is not bothered by the Notice of Intent to	Futurewise [Tim	YES	No rule change needed, as response to motions

	Participant	Participate as has been present in existing rules but believes the Board should have the ability to disapprove or limit participation.	Trohimovich]		such as motion to participate is always allowed within 10 days, and Board can rule based on the facts and circumstances
Compliance	242-03-930 Compliance Participant	Are two motions required? One to be a compliance participant and a separate motion if want to intervene? Can they be combined into a single motion (seems logical)?	GordonDerr [Jay Derr]	YES	Combining the motions is optional at party's convenience – no rule change required
Compliance	242-03-930 New Issues	Appreciates the clarification in -930(2) as to when a new PFR is required; will prove very helpful	Futurewise [Tim Trohimovich]	NA	NA
Compliance	242-03-940 New Issues	Strongly approves text that new issues must be challenged in a new PFR	Jefferson County [David Alvarez]	NA	NA
Compliance	242-03-940 Compliance hearing	Appreciates clarification as to the matters that will be heard at a compliance hearing; will prove very helpful	Futurewise [Tim Trohimovich]	NA	NA
Compliance	242-03-940 Compliance Hearing	Subsection (7) implies the Board has independent authority to impose invalidity, even if no party asks for it. This is not consistent with the presumptions of validity, the burdens of proof, and the prohibition on the Board issuing advisory opinions on issues/matters not presented by a party in the proceedings. The phrase “or on its own motion” should be deleted from this rule.	GordonDerr [Jay Derr]	YES	RCW 36.70A.330(4) specifies “upon petition of a party” the board may consider invalidity. The rule is amended to delete “on its own motion”
Compliance	242-03-940 Compliance Hearing	Fails to include “state agencies” in entities subject to an order of noncompliance.	Ecology [Tom Clingman]	YES	Reference to “state agency” is added throughout this section
Compliance	242-03-910 Expedited compliance	Rule represents a good idea and approves its inclusion	Jefferson County [David Alvarez]	NA	NA

	hearing				
Compliance	242-03-910 Expedited compliance hearing	The draft rule allows only cities and counties to request this expedited hearing. Request adding “state agencies” to this section.	Ecology [Tom Clingman]	YES	Reference to “state agency” is added throughout this section
Compliance	242-03-920 Statement of Actions Taken to Comply // Index	Strongly supports clarification as to the Compliance Index including documents from the underlying case but also suggests the following be added as the last line of the rule:  Statement of actions taken to comply – compliance index. On or before the date indicated ... all additional material used subsequent to the remand in taking the action to comply, <i>including documents submitted to the respondent during public comment periods.</i>	Futurewise [Tim Trohimovich]	YES	Section is amended to clarify that compliance Index includes materials submitted in public comment
Compliance	242-03-920	Not clear as to whether the local government must provide another copy of the Index from the original proceedings along with additional “compliance” materials Believes the Board’s existing system – Index and Additions to Index – works in this regard	Jefferson County [David Alvarez]	YES	Board makes no additional change – the rule requires only the cumulative Index, not all the constituent materials.
Compliance	242-03-920 SATC	Appears that the rule should include “state agencies” in the identification of the parties responsible for addressing an order of noncompliance.	Ecology [Tom Clingman]	YES	Reference to “state agency” is added throughout this section
Compliance	242-03-900 to 242-03-990 Compliance and Remand	Sections provide a lot of clarity to the process and will provide assistance to all	Ed McGuire	NA	NA
Compliance	242-03-980 Record on Compliance or Appeal	Are you sure you want the default in an appeal of a compliance proceeding to be ALL documents in ALL proceedings in that case number? It seems preferable that the default would be ALL	GordonDerr [Jay Derr]	YES	Board makes no additional change. The parties are responsible for determining whether

		documents used in compliance proceeding/order being appealed PLUS any documents from prior proceedings that party's request.			record can reasonably be shortened.
Continuances	242-03-580	Thinks using the term "continuance" is a mistake in view of the 180-day statutory deadline because it creates confusion with court "continuances" which extend the final decision. Why not say "modify the schedule"	Ed McGuire	YES	Title clarified to say: "Continuance of hearing" and indicate the whole case deadline does not slide
Critical Areas Expert	242-03-340	New section addressing the hiring of a critical areas expert. Recognizes that GMA allows but concerned with this because: 1. How does local government challenge, cross-examine, or dispute the findings of the expert 2. While allowed under 36.70A.172(2), the expert's report was not part of the record that shaped the challenged decision so how can it be used to determine if action was clearly erroneous or results in substantial interference 3. Use of an expert after the decision process contravenes the GMA's bottom-up approach and results in a top-down approach	Jefferson County [David Alvarez]	YES	No change. This process is rare but is allowed under RCW 36.70A.172(2)
Critical Areas Expert	242-03-340	Expert should be someone that resides in the area	Stacey Bjordahl	YES	No change. This process is rare but is allowed under RCW 36.70A.172(2)
Critical Areas Expert	242-03-240	Whole provision could benefit from some additional explanation of what is expected/what is permitted. For example, what scope of objections can be filed? Can a party offer counter expert opinion? Can a party offer additional evidence to impeach or question the expert's credentials or conclusions? Can a party request an	GordonDerr [Jay Derr]	YES	No change. This process is rare but is allowed under RCW 36.70A.172(2)

		<p>opportunity to cross examine the expert?  Recognizes the statute permits, however “fraught with the peril of considering evidence outside the local record, of selecting one expert view over another”  Encourages expansion to clarify</p>			
Default	242-03-710	The revised language is better than what had existed	Ed McGuire	NA	NA
Default	242-03-710	How does the motion for default work if this occurs at the hearing? Still a motion and 10 days to respond required? Or is the motion made at hearing and ruled on at hearing (with the post-ruling 7 days for the impacted party to file objection and request set aside)?	GordonDerr [Jay Derr]	YES	No rule change needed. It’s within the PO’s discretion whether to issue the default order summarily.
Definitions	242-03-030(2)	Definition of Administrative Officer: Specify it is a Board member elected; not just any person, since the RCW specifies a Board member.	GordonDerr [Jay Derr]	YES	Rule is amended, consistent with RCW 36.70A.270(10)
Definitions	242-03-030	Definitions should be provided for the SMA and SEPA and any subsequent amendments thereto, as the terms are used in this rule.	Ecology [Tom Clingman]	YES	Definitions are added at WAC 242-03-020(19)(20) and (21)
Definitions	242-03-030	<p>SB 5192 (adopted by 2011 legislature) amends the definition of “publication” under the SMA. The bill is effective July 22. (Will need to consider how to harmonize effective date of the legislation with effective date of rules.) Proposed revisions:</p> <p>(16) "Publication" means:  (a) For a city, the date the city publishes the ordinance or summary of the ordinance adopting a comprehensive plan, development regulations or subsequent amendment, as is required to be published, or the date <del>the city</del> <u>the department of Ecology</u> publishes notice that the shoreline master program or amendment has been</p>	Ecology [Tom Clingman]	YES	The publication rules are amended in view of the legislative change.

		<p>approved or disapproved by <u>final action of the department of ecology</u>;</p> <p>(b) For a county, the date the county publishes the notice that it has adopted a comprehensive plan, development regulations, or subsequent amendments pursuant to <u>RCW 36.70A.290(2)</u>, or the date <del>the county</del> <u>the department of Ecology</u> publishes notice that the shoreline master program or amendment has been approved or disapproved by <u>final action of the department of ecology</u>.</p>			
Direct Review	242-03-290	Make this option more flexible	Stacey Bjordahl	YES	This rule comes directly from RCW 36.70A.295. No change needed.
Dispositive Motions	242-03-555 and 242-03-560	<p>Appreciations addition of special sections on dispositive motions in -555 (jurisdiction, standing, timeliness) in contrast to -560 (notice and participation) – thus recognizing the difference in these types of motions</p> <p>However, believes the use of “summary judgment” in 242-03-555 is misguided/unnecessary/without explanation or definition. Believes the common board practice dealing with dispositive motions is adequate, suggests the rule be modified to read: (additions in italics, deletion in strikethrough)</p> <p>242-03-555(1) Dispositive motions on a limited record to determine the Board’s jurisdiction, the standing of a petitioner, <del>or</del> the timeliness of the petition, <i>or a failure to act by a statutory deadline</i> are permitted. <del>The Board rarely entertains a motion for summary judgment except in a case of</del></p>	Snohomish County [John Moffat]	YES	Upon consideration, the Board does not amend -550 regarding “summary judgment” as different regional practice is involved.

		<del>failure to act by a statutory deadline.</del>			
Dispositive Motions	242-03-555 and 242-03-560	Likes the new rules on dispositive motions	Jefferson County [David Alvarez]	NA	NA
Dispositive Motions	242-03-555	Approves of limitation on reconsideration of dispositive motion unless final	Ed McGuire	NA	NA
Dispositive Motions	242-03-555	Makes sense for these to be governed by the hard and fast PHO schedule and opportunity to respond. Can appropriately be treated differently than other motions.	GordonDerr [Jay Derr]	NA	NA
Dispositive Motions	242-03-560 Notice and Public Participation	Why does the PO get to decide whether the panel will decide or whether to go forward to the HOM? Believes rule initially included so as to save time/money by dealing with issue upfront	Ed McGuire	YES	Board recognizes public participation motion may require full hearing if evidence is complicated
Disqualification	242-03-570	Rule handles the procedures nicely	Ed McGuire	NA	NA
Evidence	242-03-620 Evidence at hearing	Approves of this addition to the rules	Ed McGuire	NA	NA
Evidence	242-03-620 Evidence at hearing	If the Board is limited to the record, this section is a bit confusing what “hearsay” would be coming in at hearing? How will the 10 days to object to authenticity work? Will that happen AFTER the close of the hearing? If based on Record, why shouldn’t authenticity issues be addressed up front? If new evidence is appropriate and permitted at the hearing, then the parties should be given the opportunity to examine for issues of authenticity right at hearing and then the Board should rule. How does “incorporation by reference” work in this situation? Shouldn’t a party be required to PRODUCE a document and not just incorporate it	GordonDerr [Jay Derr]	NA	Subsection substantially re-organized for clarity in response to comments

		by reference if they expect the Board to base a decision on it?			
Evidence	242-03-620 Evidence at hearing	Rule implies that a board can accept “evidence” at a hearing, notwithstanding the requirements for supplementation Assume only meant to apply to evidentiary admissibility requirement but would like to see language referencing “record” documentation	Kitsap County [Shelly Kniep]	Yes	Subsection substantially re-organized for clarity in response to comments
Evidence	242-03-630 Official Notice	How broad is the intent of “codes or standards that have been adopted by . . . a nationally-recognized organization or association”? This category of official notice seems ripe for disagreement as to the validity of the information, depending on the organization. For example, is a standard of a national property rights alliance going to be accepted by environmental organizations (and vice versa)? Suggests removing this category, especially since the information the Board is being asked to take official notice of wasn’t vetted in the local process.	GordonDerr [Jay Derr]	YES	Language comes verbatim from APA – RCW 34.05.452(2)(c). No change required.
Exhibits	242-03-520	Clarification as to when a document becomes part of the record when authorized via a Motion to Supplement or Official Notice. Recommends that if document is attached to Motion to Supplement it need not be attached to the subsequent hearing brief, thereby reducing costs/volume.  Suggested language: Except as otherwise provided in these rules, the evidence in a case shall consist of the exhibits cited in the briefs and attached thereto <i>or to an approved motion to supplement</i> . Exhibits shall be	Futurewise [Tim Trohimovich]	YES	The board has found that exhibits need to be attached to briefs, not merely referenced from prior motions. The PO may waive the requirement for a lengthy document.

		... listed in the index, unless a motion to supplement the record has been granted, <i>or the board takes official notices of material facts...</i>			
Exhibits	242-03-520	Clarify whether “showing of good cause” for additional exhibits is same standard as supplementing the record (of substantial assistance, etc.)	GordonDerr [Jay Derr]	YES	The last sentence in - 520 is deleted, and provision for additional exhibits is now in - 565(1) and -620(4)(c)
Ex-Parte Communications	242-03-130	What sanctions could the Board impose?	Ed McGuire	YES	Referenced sanctions might include not allowing person to present oral argument, deleting section of brief, or disregarding argument on an issue.
Ex-Parte Communications	242-03-130	If ex-parte communications occurs, rule should require disclosure and inclusion in record of communication, similar to Appearance of Fairness RCW 42.36.060	Kitsap County [Shelly Kniep]	NA	Sentence has been added requiring disclosure as suggested.
Filing and Service of Papers	242-03-240	<p>Would like to see service by email be the default with a party given the opportunity to request service by mail; this reflects preference of parties (including <i>pro se</i> parties) and also provides documents in a more timely manner</p> <p>Would like to see service by email of exhibits be the default, with parties opting out in full or in part</p> <p>Would like to see the Board allow service of exhibits by email</p> <p>Suggested language: (italics additions; strikethrough deletions)</p> <p>(2) Services: Parties shall serve copies of all filings on all other named parties by <i>electronic mail</i>, mail</p>	Futurewise [Tim Trohimovich]	YES	<p>Subsection -240(2) is revised to make electronic service the default mode for papers other than the PFR, and -530(9) is revised to require the PO at the PHC to determine whether any party will have difficulty with electronic service and, if so, require mail to that party.</p> <p>See -230 for PFR</p>

		or personal service, ...Service is accomplished when the document is <i>emailed or</i> deposited in the mail and postmarked by the required date <del>or, by agreement among the parties when the document is transmitted electronically.</del> <i>A party may request that service be made by mail for some or all of the documents. The Board may require in the prehearing order that the original and copies of all documents including exhibits be mailed to the Board.</i>			requirements
Filing and Service of Papers	242-03-240	<p>Board should consider modifying the rule regarding service by mail, especially for short response items (e.g. can lose 3 days between mailing and receipt or more if factoring in weekends and government furlough days), leaving just 1-2 days to respond.</p> <p>Statute is silent on service, of the opinion that the Board would have authority to address this by rule</p>	GordonDerr [Jay Derr]	YES	Subsection -240(2) is revised to make electronic service the default mode for papers other than the PFR, and -530(9) is revised to require the PO at the PHC to determine whether any party will have difficulty with electronic service and, if so, require mail to that party.
Filing and Service of Papers	242-03-240	<p>Questions whether there is now an expectation that all briefs and exhibits will be filed electronically</p> <p>Reads -240(1) requiring service by email unless filer lacks the technology but 242-03-140 still requires a signed pleading and 242-03-090 suggests the PHO can create rules for submittal of documents/exhibits</p> <p>Suggests the rules expressly state what must be filed electronically and what can be filed electronically along with how to handle exhibits</p>	Jefferson County [David Alvarez]	YES	Rules require that papers filed with the Board electronically need also to be deposited in US mail (which addresses the question of signed pleadings)

Filing and Service of Papers	242-03-240	Service by mail can create time problems; recommends Board adopt a rule similar to CR 6(e) addressing additional time after service by mail Given copious exhibits in some cases, email is not always an efficient/effective means for parties to exchange documents and may even cause additional delay	Kitsap County [Shelly Kniep]	YES	Subsection -240(2) is revised to make electronic service the default mode for papers other than the PFR, and -530(9) is revised to require the PO at the PHC to determine whether any party will have difficulty with electronic service and, if so, require mail to that party.
Filing and Service of PFR	242-03-230(2)	If the challenge is to a site-specific change, notice should go to property owner. If this isn't required in the initiation of an appeal, the Presiding Officer should request the city/county to give notice to the property owner	Stacey Bjordahl	YES	Board did not agree to this change. The issue is better addressed legislatively.
Filing and Service of PFR	242-03-230	Concerned that upon filing of PFR a petitioner may serve by mail but because of short time to prepare Record, Core Documents, and other material, Service by Mail can result in County getting PFR up to a week after filing Given economy, most jurisdiction working with reduced staff/hours – PFR should be served on parties at same time it is filed with Board	Kitsap County [Shelly Kniep]	YES	Rule has been revised to require same-day service of the PFR on the respondent(s).
Final Decision and Order	242-03-820	RCW 36.70A.320 grants Board authority to review for compliance with both goals and requirements of the GMA; recommends this rule reflects the two aspects:  (1) in its final decision and order the Board shall either: (a) Find that the state agency, county, or city is in	Futurewise [Tim Trohimovich]	YES	No change needed. -820 quotes RCW 36.70A.300(1) and (3)(a) and (b) which refer to GMA "requirements," not "goals and requirements."

		compliance with the <i>goals and</i> requirements ... (b) Find that the state agency, county, or city is not in compliance with the <i>goals and</i> requirements ...			
Final Decision and Order	242-03-820	Appreciates clarification in -820(2)(c) as to Board's retention of jurisdiction	Snohomish County [John Moffat]		
Final Decision and Order	242-03-820	<p>We request consideration of whether clarification is needed regarding procedural roles of the local government and Ecology in responding to a GMHB decision. Potentially useful clarifications include:</p> <ul style="list-style-type: none"> <li>Clarify the parties held in <b>noncompliance</b>. In particular, all parties might benefit from clarifying whether the decision remanded to <i>both</i> the department and the local government. Our assumption is that resolution of noncompliance will follow SMP adoption process - local government approval of an SMP amendment, followed by Ecology approval (with concurrence of local government.) We need to ensure harmony between the details of Board decisions and responsibility for corrective action, with the SMA-defined SMP adoption process. <ul style="list-style-type: none"> <li>The rules appear to need clarification on <b>remedies</b> applicable to local government failure to take action to address a Board SMP appeal decision. (We need to consider linkage with the SMA remedy for local failure to act - Ecology adopting an SMP by <i>rule</i>. A complicating feature in applying this to GMHB decisions: Appeals of ECY</li> </ul> </li> </ul>	Ecology [Tom Clingman]	YES	<p>Provisions concerning the Final Decision and Order, Compliance, Noncompliance, and Invalidity are revised to clarify SMP review process and role of Ecology</p> <p>The remedy of appeal to court where an SMP is adopted by rule is referenced in -940(4).</p> <p>Failure to act by an SMA deadline is addressed in -940(4).</p> <p>The language in the rule revisions applies invalidity to a city, county or state agency whose actions frustrate the goals of the GMA, including incorporated SMA goals. See -950. The Board is required to</p>

		<p>adoption of SMPs by rule go to <i>court</i>, not the GMHB.)</p> <ul style="list-style-type: none"> <li>○ Also may warrant clarification of the remedy in event that Ecology fails to take action.</li> <li>• The rules do not seem clear on whether <b>invalidity</b> applies to SMP actions. <ul style="list-style-type: none"> <li>○ While the WAC specifies that remand applies to “plans and development regulations”, the subsection on invalidity specifically applies to “comprehensive plans and development regulations.” Several sections of the rule may need revision to clarify whether invalidity may apply only to GMA actions (not including SMA), or to all GMHB decisions.</li> </ul> </li> <li>• Similarly, the rule sections on <b>sanctions</b> may need clarification regarding whether sanctions can apply to SMP update requirements.</li> </ul> <p>Also: “<b>Denial</b>” of SMPs is an appealable action under 90.58.190 and should be included here. This needs to be expressly included in the appropriate sections of the WAC. It may also be important for the rule to specify the <i>form</i> of the GMHB decision related to a denial, along the following lines: “For appeals of SMP denials, the Board may affirm, reverse or modify the decision of the agency, or may remand the SMP.”</p>			<p>inform the Governor of its rulings, but the statute does not provide sanctions directed to state agencies, only to cities and counties. See RCW 36.70A.340, .345.</p> <p>Rules -025(1)(b) and -820(1)(a) and (b) are amended to include “approval <u>or denial</u>” of an SMP.</p>
Final Decision and Order	242-03-870 Publication of FDOs	Why not establish a timeline – 48 hours, 1 week – so as to force when publication occurs	Ed McGuire	YES	No change necessary; internal policy speaks to prompt publication
Function of Board	242-03-020	This section should expressly acknowledge the	Ecology	YES	Reference to SMA and

		board's function related to SMA and SEPA, as well as GMA.	[Tom Clingman]		SEPA added as requested
Hearing on the Merits – Procedures	242-03-610	Should this section specify that the Board generally (if not always) give equal time to each side; and if there are multiple parties on the same side, give discretion to require them to split their time?	GordonDerr [Jay Derr]	YES	New section (3) added with clarification as requested
Illustrative Exhibits	242-03-610	Supports the requirement to circulate	Kitsap County [Shelly Kniep]	NA	NA
Illustrative Exhibits	242-03-610	Appreciates the inclusion of language related to illustrative exhibits but envisions objections based on the “four days prior” language	Ed McGuire	NA	NA
Index of the Record	242-03-510	Supports the “Additions to the Index” process established in this rule but recommends that the rules explicitly provide that documents providing during public comments are to be included in the Index  Suggested language: (1) Within thirty days of service of a petition for review, ...an index listing all material used in taking the action, <i>including documents submitted to the respondent during public comment periods</i> , which ...	Futurewise [Tim Trohimovich]	YES	Clarifying language added as requested
Index of the Record	242-03-510	Approves of language but assumes PO can still waive the 30-day filing requirement so as to provide it at PHC	Ed McGuire	YES	Waiver is within the PO's discretion. No rule amendment needed.
Index of the Record	242-03-510	Suggests adding a new subsection (4) to this rule that would allow a respondent to file a corrected Index at any time to add/delete/correct documents and also that in submitting a corrected index the respondent is not subject to the supplementation rules of 242-03-565	Snohomish County [John Moffat]	YES	New subsection (4) added with a time limit to a week prior to filing of petitioner's prehearing brief
Index of the	242-03-510	Regarding the index of record, reference to	Ecology	YES	“State agency” added to

Record		<p>Ecology or “state agency” should be made. In SMP cases, Ecology will be filing its index of record along with the city or county.</p> <p>Proposed Language:  (1) Within thirty days of service of a petition for review, the respondent city, county, <u>and/or state agency</u> shall file with the board and serve a copy on the parties an index listing all material used in taking the action which is the subject of the petition for review. The index shall contain sufficient identifying information to enable unique documents to be distinguished.</p>	[Tom Young]		language of this section as requested
Initiating an Appeal	242-03-200	<p>RCW 36.70A.290 grants Board jurisdiction to determine compliance with the <i>goals and requirements</i> of the GMA. Recommends the addition of the “goals” to the rule:</p> <p>(4)(a) A state agency, county, or city is not in compliance with the <i>goals or requirements</i> of the Growth Management Act ...</p>	Futurewise [Tim Trohimovich]	YES	This provision quotes RCW 36.70A.290(2) verbatim, which says “ <u>goals and requirements.</u> ” Provision is amended as requested.
Initiating an Appeal	242-03-200	Recognizes that 60-day appeal period is statutory but would support legislation shortening (e.g. 21-30 days) to comport with other appeals (e.g. LUPA)	Kitsap County [Shelly Kniep]		Appeal period is statutory and can’t be changed by Board rule.
Initiating an Appeal	242-03-200	<p>This section recognizes that where applicable the appeal (petition) must allege non-compliance with the SMA and SEPA. Issues related to compliance with SMA rules are also challengeable. We suggest that it may help clarify the basis for appeal if challenge to WAC 173-26 issues is explicitly included here.</p> <p>The same issue may pertain to SEPA rules.</p>	Ecology [Tom Clingman]	YES	The rule is amended to include “SMA and applicable guidelines” and “SEPA and rules,” as requested.

Initiating an Appeal	242-03-200	In the recent <i>Pilcher</i> case, the board pointed out its narrower scope of review for Shorelines of Statewide Significance and its broader review authority for Shorelines of the State. To help ensure consistency among GMHB regional panels, it may be useful to reference these distinctions in the board's review authority in your practice and procedures rules.	Ecology [Tom Clingman]		No change proposed. The board has decided not to try to define by rule the standards of review for many different types of challenges under GMA, SEPA and SMA.
Intervention	242-03-270	Concerned about deadlines, particularly if a party doesn't know their interest is affected until they see the Prehearing Brief. For example, requested relief can seek noncompliance and or invalidity of an entire ordinance, not just a limited section, which could then trigger interests of other parties affected by other portions of the ordinance. In that situation, it seems appropriate for the Board to permit intervention even if past the deadline specified in this section, provided the intervenor is bound by any briefing schedule established by the Board.	GordonDerr [Jay Derr]	YES	Rule allows late filing for intervention if good cause is shown. No further rule change is needed.
Intervention	242-03-270	Generally supports but concerned may be used by parties who are otherwise barred as untimely. Rule should clarify that intervenors not allowed to raise new issues other than those in PFR	Kitsap County [Shelly Kniep]	YES	Clarifying language is added
Invalidity	242-03-820(3)	Criteria for invalidity should include county-wide substantial interest or applicability. Declaration of invalidity is inappropriate for small issues and site-specific proposals	Stacey Bjordahl	YES	The criteria are established in the statute – RCW 36.70A.302(1).
Invalidity	242-03-820	Would be helpful to specify that the Board should strive to only invalidate that portion or portions of the plan or regulation necessary to avoid substantial interference with the goals of GMA, not whole ordinances, unless the Board finds that the entire	GordonDerr [Jay Derr]	YES	Rule requires invalidity order to be narrowly targeted -820(3)(c). No further change needed.  See RCW 36.70A.302

		ordinance substantially interferes with the goals of GMA.			“part or all”
Invalidity	242-03-850 Modifying Invalidity	If the Board invalidates more of an ordinance than a respondent deems appropriate, should they bring a motion for reconsideration under (.830), or is it a motion to modify invalidity prior to adopting new ordinance under (.850)? Seems like some of this could/should be handled like reconsideration instead of mandating another hearing before the Board can consider this issue. Especially appropriate when a party wants to ask the Board to narrow the invalidity prior to adoption of any amendment to address (or partially address) the substantial interference.	GordonDerr [Jay Derr]	YES	It appears a respondent could use either a -830 motion or an -850 motion in the suggested case. Each motion is based in statute. No rule change is needed.
Invalidity	242-03-850 Modifying Invalidity	Supports this new provision	Kitsap County [Shelly Kniep]		Provision is based on RCW 36.70A.302(6)
Invalidity	242-03-950 Rescinding Invalidity after new legislation	Limited to city and county adoption of “legislation” to correct issues leading to invalidity. We request that this section be clear re: whether or not invalidity applies to SMPs, and whether this action only applies to local governments.	Ecology [Tom Clingman]	YES	Amended to refer to “legislation <u>or agency action</u> ”
Jurisdiction	242-03-025	RCW 36.70A.290 grants Board jurisdiction to determine compliance with the <i>goals and requirements</i> of the GMA. Recommends the addition of the “goals” to the rule:  (2) Subject matter jurisdiction. The board shall hear and determine petitions alleging that a state agency, county, or city is not in compliance with the <i>goals or requirements</i> of the act ...	Futurewise [Tim Trohimovich]	YES	This rule quotes RCW 36.70A.280(a) which refers to “requirements of the GMA.” No change needed.
Motions	242-03-550 General	Assume that this rule is attempting to limit/eliminate motions at the HOM but doesn’t	Ed McGuire	NA	NA

	Requirements	think, in practice, it will happen			
Motions	242-03-550	Should there be a time certain for motions rulings – such as, within 10 days of the response?	Dennis Dellwo	YES	On consideration, the Board does not find a time-certain is needed.
Motions	242-03-550	Does the Board entertain motions to shorten time for filing motions responding to motions? Or is it always 10 days? If shorter than 10 days to respond, then “service by mail” certainly needs to be addressed, since a 10-day response could get shortened to a couple working days, depending on the calendar.	GordonDerr [Jay Derr]		In practice, the PO may modify a motions schedule or the parties by agreement may adjust time. No rule change is needed to allow this flexibility.
Notice of Hearing	242-03-500	This is not quite clear and may need to be reorganized	Dennis Dellwo	YES	Section has been substantially reorganized as suggested.
Notice of Hearing	242-03-500	This is not quite clear and may need to be reorganized	Stacey Bjordahl	YES	Section has been substantially reorganized as suggested.
Petition for Review	242-03-210 Contents of PFR	Concerned with 242-03-210(3)’s requirement that the document under appealed be attached to the PFR and that Petitioner must provide a copy of the entire document within 30 days. Questions whether this means the entirety of the Comp Plan or just that portion under appeal?	Jefferson County [David Alvarez]	YES	This language is not new but was present in the prior WAC rules. Generally, the Board requires attachment of the challenged ordinance/resolution and the relevant parts - not the entire CP or DRs. No change needed.
Petition for Review	242-03-210 Contents of PFR	This section does not seem clear on whether “failure to act” on required SMP updates is appealable. It is very important to clarify this. (Resolution of this issue may affect other rule	Ecology [Tom Clingman]	YES	Language has been added as requested.

		sections as well.)			
Petition for Review	242-03-260 Amendments to PFR	Appreciates clarification that an amendment to a PFR may not add new issues	Snohomish County [John Moffat]	NA	NA
Petition for Review	242-03-260 Amendments to PFR	Excellent improvement as this rule prohibits amendments which add new challenges while allowing new legal bases for challenges already in the PFR	Jefferson County [David Alvarez]	NA	NA
Petition for Review	242-03-260 Amendments to PFR	Questions why a party can only provide legal basis and not new issues – thus “clean up the statutory cites?” Could parties be added in 30-day period? Why is PO the only one that gets a complete statement of issues? Amendment process has resulted in re-characterization of issues as well as clarification	Ed McGuire	YES	No change. Board recognizes there’s still some ambiguity in the provision.
Petition for Review	242-03-260 Amendments to PFR	Suggests setting the latest date for amendments as a specified number of days before the prehearing conference, so amendments easy to include in PHO	GordonDerr [Jay Derr]	YES	No change. Public consultation prior to this rule revision indicated 30-days is needed for PFR amendment.
Petition for Review	242-03-260 Amendments to PFR	Language is somewhat confusing and may create problems Understands that amendments need to be allowed but not sure by what is meant by limiting to “legal bases” while not raising new challenges Given the 60-day appeal, believes amendments should be limited solely to clarifying issues	Kitsap County [Shelly Kniep]	YES	No change. Board recognizes there’s still some ambiguity in the provision.
Prehearing Conference	242-03-535	Appreciates the requirement that the PHC be held within 30 day of filing but wonders if this would interfere with the petitioner’s ability to file PFR amendments in a timely manner	Jefferson County [David Alvarez]	YES	PFR issue statements may be amended after the PHC if authorized by PO. No change needed. See 242-03-260
Prehearing	242-03-540	Might be some circumstances when some of the	GordonDerr	YES	PO has discretion for

Conference/Order	242-03-545	tasks identified in the PHO will need additional working out after date of PHC, such as stipulation of exhibits, witnesses, etc. Does the current language leave sufficient room for that discretion?	[Jay Derr]		flexibility here. No change needed.
Reconsideration	242-03-830	Appreciates the ability to request the correction of minor errors without have to file a formal motion for reconsideration	Snohomish County [John Moffat]	NA	NA
Reconsideration	242-03-830	Would like clarity - new rules should specifically state whether a reply is allowed on a motion for reconsideration. If one is allowed, the rules should obviously state the time period for when it is due.	Snohomish County [John Moffat]	YES	Amended to clarify board may request additional briefing from any party, including reply from petitioner.
Reconsideration	242-03-830	Notes the removal of typographical errors as a basis for reconsideration but questions the language of the rule because it requires agreement of petitioner and respondent Thus, if agreement can't be reached, reconsideration would need to be based on errors of procedure/misinterpretation of law or fact, with the moving party "hoping for the best"	Jefferson County [David Alvarez]	YES	If the error is more than clerical, the party must move for reconsideration, as comment notes. No change needed.
Reconsideration	242-03-830	Suggests that motion for reconsideration be filed <i>and served</i> within 10 days of service of decision	Kitsap County [Shelly Kniep]	YES	Section revised as requested
Recordings – Hearings	242-03-600	Is allowing for recordings "by others" required by law? Should only be with consent of the parties being recorded; potential for disruption, if not misuse.	GordonDerr [Jay Derr]	YES	Provisions mirror APA language. No change required.  See RCW 34.05.449(4)
Regional Panel	242-03-015	This subsection provides a pretty open-ended "for other reasons" way to change board composition. Matches the RCW but could either specify what might constitute "other reasons" or might express strong	GordonDerr [Jay Derr]	YES	Provisions mirror statute. No change needed.

		disinclination to vary from the preferred board makeup but for the first two reasons specified.			
Remand – from Court	242-03-990	What does the Board do when the Superior Court doesn't remand? In past had parties get something in writing and the record	Ed McGuire	YES	No rule change required. While it is true that, in most cases, the Superior Court will not issue a mandate like the Court of Appeals/Supreme Court does – the Superior Court's decision will include a remand so that should be sufficient for the Board to move forward
Remand – from Court	242-03-990	Agree there needs to be flexibility in responding but thinks it would be helpful to clarify whether Board's rules on motions/procedural matters apply during remand period	Kitsap County [Shelly Kniep]	YES	Board's procedural rules apply on remand. No rule change required.
Rules of Professional Conduct	242-03-120	Although approves of language, what sanctions could the Board impose – especially on non-attorneys	Ed McGuire	YES	Non-attorney parties can be required to identify a different spokesperson for the group, or the hearing time shortened, or be limited to written argument
Sanctions	242-03-960 Continued Non-Compliance, Governor requested sanctions	Section creates authority for gubernatorial sanctions. We request that this section be clear re: whether gubernatorial sanctions may apply to SMPs.	Ecology [Tom Clingman]	YES	Under the statute, sanctions appear to apply to SMPs and SEPA violations, but are applied to cities and counties, not state agencies. No rule

					change needed.  See RCW 36.70A.330, .340
Settlement/ Mediation	242-03-540 Prehearing Conference	Need to further promote mediation; suggests rules be amended to include:  (1) Determine the feasibility of and encourage settlement of the matter or any portion therefore, <i>including (a) informing the parties of the availability of mediation services; (b) providing the parties with a description of the mediation process; and (c) educating the parties of the potential benefits of mediation.</i>	WSBA/KCBA ADR Section – Land Use Mediation Focus Group [Courtney Kaylor, et al]	YES	Section -540(1) has been revised, and Section -575(5) has been added.
Settlement/ Mediation	242-03-545 Prehearing Order	Addition of a new section explaining mediation within the PHO, suggested language:  <i>Mediation. Mediation is a voluntary process in which the mediator acts as a neutral third party and helps the parties work together to create a mutually acceptable resolution of the appeal. The mediator does not make any decisions about the appeal. If the parties reach agreement about all of some of the issues, then they no longer need to proceed with the appeal of those issues. If the parties do not reach agreement through mediation, the appeal proceeds as if mediation had not occurred. The Board encourages the use of mediation in Board cases. At the request of a party, the Board shall appoint a board member from a different panel to serve as a mediator. Use of a Board member from another panel is at no cost to the parties. Alternatively, the parties may retain a private mediator. At the request of the</i>	WSBA/KCBA ADR Section – Land Use Mediation Focus Group [Courtney Kaylor, et al]	YES	Section -575(5) is added to include provision for mediation.

		<i>parties, the Board may grant a settlement extension pursuant to WAC 242-03-575 to allow time for the mediation process.</i>			
Settlement/ Mediation	242-03-540	Supports WSBA/KCBA proposal regarding explanation of mediation at PHC	GordonDerr [Jay Derr]		Both -540(1) and -575(5) are amended in response to this suggestion.
Shoreline Master Programs		New language not proposed; voiced concern that due to the current SMP update process it is important GMHB rules provide clear processes and outcomes for SMP appeals. Ecology will consider whether to recommend clarifications to GMHB rules or amend their own SMP Rules.	Ecology [Tom Clingman]	YES	Proposed WAC 242-03-230 Filing and Service of PFR now includes language as to service on Ecology of SMP appeals; WAC 242-03-030(16) defines Publication in relationship to SMP appeals
Stay	242-03-860	Approves of the addition of criteria for the issuance of a stay	Snohomish County [John Moffat]	NA	NA
Stay	242-03-860	Approves the text providing for stays	Jefferson County [David Alvarez]	NA	NA
Stay	242-03-860	Motion for stay should be 10 days after filing an appeal with the court, not 10 days after FDO	Stacey Bjordahl	YES	Section amended as requested
Stay	242-03-860	Grant of Stay is OK if jurisdiction agrees to a hold on implementing the non-compliant ordinance  Must revise the 5 criteria to clarify which are “ands” and which are “ors.”	Dennis Dellwo	YES	Section is re-formatted to provide clarity
Stay	242-03-860	Supports stay provision – otherwise appeal may be mooted out. Kitsap County has enacted a	Kitsap County [Shelly Kniep]	NA	NA

		Moratorium on implementation of non-compliant plans and DRs during the compliance period.			
Stay	242-03-860	Thinks this is a mistake as it undermines the GMA and allows “foot dragging”	Ed McGuire	YES	New section allows stays when criteria are satisfied
Stay	242-03-860	How do the “and’s” and “or’s” work? Are (4) and (5) alternatives to 3 only? (and thus 1 and 2 are ALWAYS required?) Or, for example, is a showing under (5) sufficient to support a stay, even if none of the others are present? Might need a bit of reformatting to clarify.	GordonDerr [Jay Derr]	YES	Section is reformatted for clarity.
Stay	242-03-860	Fully supports	Kitsap County [Shelly Kniep]	YES	NA
Stay	242-03-860	One of the criteria for a stay (subsection 3) is “not interfere with goals of the GMA.” We propose that the “goals of SMA” also need to be referenced here.	Ecology [Tom Clingman]	YES	Subsection (3) is revised as requested.
Supplementation	242-03-565 Motion to Supplement the Record	<p>Recognizes deadlines for motions as established in PHO but contends that the need to supplement may not be known until hearing brief is being drafted. Board has, in past, allowed for late motion to supplement. Suggests rule be modified to reflect this:</p> <p>Motion to Supplement the Record. Generally, the board will review only documents and exhibits taken from the record ... A motion to supplement the record shall be filed by the deadline established in the prehearing order ... and shall state the reasons ... as specific in RCW 36.70A.290(4). <i>A motion to supplement the record may be filed after the deadline for good cause and where granting the motion will allow the other parties an adequate opportunity to</i></p>	Futurewise [Tim Trohimovich]	YES	Section is revised to add allowance for late motion to supplement when necessary for rebuttal or other good cause shown.

		<i>respond to the offered evidence.</i> Evidence arising subsequent ...			
Supplementation	242-03-565 Motions to Supplement the record	<p>Motions should not be decided based on an arbitrary time deadline but on the merits of the rule for supplementing the record. Believes the deadline currently being used in PHOs is too early, especially for responding jurisdictions which may not be aware of the need to supplement until the hearing brief is received.</p> <p>The boards have, in the past, allowed for supplementation in hearing briefs but 242-03-565 does not anticipate/authorize late filings to reflect these real life scenarios.</p> <p>Does not propose language but urges the board to take this concern into clarification by clarifying that relief from the deadline is allowed under appropriate circumstances or through a routine provision in PHOs [see also comment related to Index above]</p>	Snohomish County [John Moffat]	YES	Section is revised to add allowance for late motion to supplement when necessary for rebuttal or other good cause shown.
Supplementation	242-03-565	Rebuttal evidence should be allowed after the normal time for motions to supplement	Jay Derr	YES	Section is revised to add allowance for late motion to supplement when necessary for rebuttal or other good cause shown.
Supplementation	242-03-565	Board should rule within 10 day or by a time certain	Dennis Dellwo	YES	Board does not find a time-certain rule to be helpful.
Supplementation	242-03-565	May be circumstances where parties need to supplement AFTER the opposing party's brief has been submitted—as rebuttal evidence. Rule deadlines for motions to supplement should allow	GordonDerr [Jay Derr]	YES	Section is revised to add allowance for late motion to supplement when necessary for

		<p>for this.</p> <p>What happens if the argument or challenge involves allegations of how a city/county has or will interpret a particular challenged section? Can the Board accept evidence that contradicts that allegation, even if not in the record for the underlying ordinance adoption? If not, will the Board reject assertions by petitioners that a local jurisdiction has or will apply a regulation a certain way if that assertion is not supported by evidence?</p>			rebuttal or other good cause shown.
Supplementation	242-03-565	<p>Concerned about parties submitting motions by deadline; normally don't know whether to object until capable of reviewing actual document – thus if party seeks supplementation on final day, opposing party may not have adequate time to seek supplementation of rebuttal document</p>	Kitsap County [Shelly Kniep]	YES	Section is revised to add allowance for late motion to supplement when necessary for rebuttal or other good cause shown.
Witnesses	242-03-330	<p>Not sure that this language will adequately cover all circumstances where planning staff, for example, are explaining the codes plans facts. Why would the Board want to discourage that form of planning staff presentation?</p>	GordonDerr [Jay Derr]	NA	Rule provides sufficient latitude. No change needed.